



MAYOR AND COUNCIL AGENDA

NO. 5

DEPT.: Community Planning and Development Services DATE PREPARED: 9/14/05
STAFF CONTACT: Somer Cross, Planner II FOR MEETING OF: 9/27/05

SUBJECT: Discussion of background information on competing policy considerations to assist in the revision of the Zoning ordinance.

RECOMMENDATION: Consider the background information presented in the competing values white paper and general recommendations of staff.

DISCUSSION:

Before specific standards can be discussed, it is necessary to understand and clearly state what is to be accomplished. To aid in defining what outcomes are desired, previously adopted policy documents have been researched to identify the goals, policies, priorities, and mandates that the comprehensive zoning revision must follow. Many times those goals, policies, etc. are not mutually supportive and may actually be in conflict. For example, improving pedestrian safety may negatively impact traffic flow. In order to balance the multiple goals, policies, etc. of the community, these priorities will need to be weighted. Then, when the final ordinance is drafted, it can be said that the entire public interest is served, not one aspect alone.

The attached Competing Values paper was created to provide the Mayor and Council with background information. Specifically, the paper details the priorities already established with regard to the policy considerations of a zoning revision, and provides some specific questions to address before beginning the drafting stage of the revision. The recommendations provided in this paper are meant only as general guidelines from which to draw specific recommendations at following meetings.

A starting point for any discussion on competing values is to review what priorities are already established for the zoning revision. These priorities take the form of legislative mandates through the Maryland Code, inherent zoning considerations, and master and neighborhood plan goals. All these priorities reflect the desired vision of the city's citizens, either through their direct input or through the election of their legislative officials.

Besides established direction, there are a number of interrelated policy decisions to be made in a comprehensive zoning revision. A number of these considerations are included in this paper. Specifically, these questions are:

1. Whether to streamline processes;
2. How to decide between:
 - a. Risk v. proven processes;
 - b. New v. existing resources; and
 - c. Flexible v. certain regulations;

In addition, this paper includes a brief discussion on the policy prioritization that will need to be

completed at different stages of the revision process. Associated with these policy priorities, is the consideration of other development regulations found in the Rockville City Code.

Next Steps: Consider the background information presented in the attached white paper and provide direction on the general recommendations of staff. More particular recommendations will be discussed in the follow-up meeting of October 17.

After initial discussions staff makes the following general recommendations.

1. **Streamlining**

- a. **"Call Up" Review** – A "Call Up" review would allow the Mayor and Council to chose to hear certain cases (which cases will be determined in the drafting stage of the revision), instead of requiring their direct review. In particular, this would include all special developments and allow for a method of "pocket approval" to save time on the Mayor and Council's agenda. Staff recommends incorporating a "Call Up" review provision for items that 1) are already approved by the Planning Commission and 2) would normally be presented to Mayor and Council. The particular requirements of this process will be addressed in the follow-up meetings of staff and Mayor and Council.
- b. **General Streamlining** – Staff recommends making the regulations as clear as possible with the inclusion of purpose statements that express the desires for the development.

The existing Development Procedures Manual is currently being revised and an additional revision will be made after the adoption of the Zoning Ordinance is completed. The manual includes flow charts to identify the process development applications must take and will include checklists to ensure that the necessary application items are provided.

- c. **Administrative Approval** - Staff feels that *minor* deviations may be reviewed administratively only within clear written standards. Clear guidelines for staff to follow in the approval review procedure would be included in the Ordinance for these items.
 - d. **Mandatory Development Review** – The City already uses pre-application conferences for the majority of major projects. Staff recommends including the requirement in the zoning revision for special developments. In the particular recommendations to be presented at a later date, staff will address whether to apply pre-application conference requirements to standard developments. This standard would codify these pre-application conferences.
2. **Processes, Resources, and Flexibility** – Staff supports the application of what may be riskier processes (i.e. new solutions to land use issues that have not been used for a long time, and have not been tested in every situation), the inclusion of new resources, as needed, and the inclusion of flexible regulations to meet the particular needs of the new regulations. A broad educational effort must be included in the zoning adoption to teach the public, staff, and various boards about any new processes or resources that may be included. In addition, new resources may be needed to provide the flexibility, to do additional analysis, and to achieve other goals of the revision.

3. **Prioritization** – Staff agrees that the top priority for all policy considerations in the revision is to preserve health and safety. Besides health and safety, no one priority, from the list of

priorities given in section 3, will trump any other priority in every situation. Some guides should be provided for staff in the zoning revision, and in applying the ordinance, to drive individual case decisions.

The question proposed is whether to be more lenient in one requirement if the inclusion of another requirement will better meet the social policy needs and goals of the City. For example, if the property owner is more willing to cluster their development for the benefit of open space preservation and parkland dedication, then the City may allow greater traffic impact from the development or permit parking waivers.

An additional question for staff is whether staff should apply these prioritization guidelines solely at the special development level or whether these guidelines should apply for small subdivisions.

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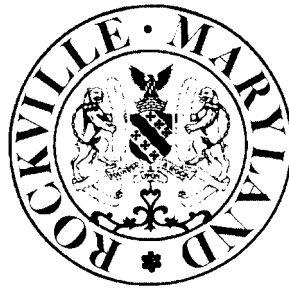
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LIST OF ATTACHMENTS:

1. Competing Values White Paper

Competing Values

Part I: Introductory Discussion



White Paper Discussion
City of Rockville, Maryland

September 27, 2005

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**City of Rockville
Zoning Ordinance Revision
Issue Paper**

Competing Values

Part I: Introductory Discussion

I. INTRODUCTION

A zoning code controls the pace and pattern of development and growth. During the course of a zoning revision, many policy decisions must be made to determine what that pattern and pace will be. Decision making within the sphere of zoning is a cumulative process. Each factor relies on the previous decision. While overarching visions (to favor rapid growth or to limit new construction) can assist revision writers, there are a number of smaller policy decisions, which build on each other, that are also essential to guide the development of the code. To facilitate the process, and to save much re-write time later, this paper asks these important questions now. These decisions will provide the analytical framework behind future staff amendments.

II. PRIORITIES ALREADY ESTABLISHED

A starting point for those decisions is to review what priorities are already laid out for a zoning revision. These priorities take the form of legislative mandates; inherent concerns of a zoning code, and master and neighborhood plan goals. All these policies reflect the desired vision of the city's citizens, either through their direct input or through the election of their legislative officials.

A. Maryland Legislative Priorities

Under the Maryland Code, Article 66B (§ 4.03), controlling land use, local zoning district regulations should be designed to meet the following priorities:

- Control congestion in the streets;
- Secure the public safety;
- Promote health and general welfare;
- Provide adequate light and air;
- Promote the conservation of natural resources;
- Prevent environmental pollution,
- Avoid undue concentration of population; and
- Facilitate the adequate provisions of transportation, water, sewerage, schools, recreation, parks and other public requirements.

In addition, regulations must be made "in accordance with the plan; with reasonable consideration for, among other things, the character of the district and its suitability for particular uses; and with a view to conserving the value of buildings and encouraging the

orderly development and the most appropriate use of land.” Md. Code, Article 66B (§ 4.03).

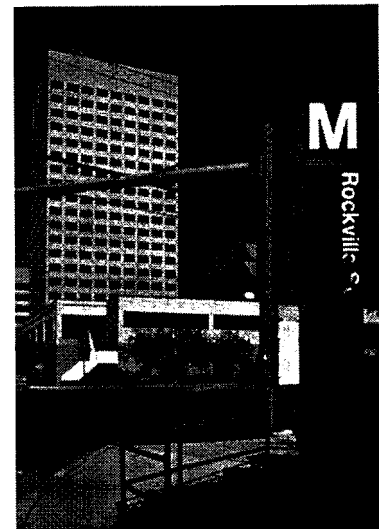
B. Inherent Priorities

Besides legislatively mandated priorities, zoning codes have innate priorities. All zoning codes minimize one property’s adverse impacts on another. A community encourages development patterns and activities that are considered desirable. Zoning also prioritizes and implements the goals of the local master or comprehensive plan and any existing neighborhood plans.

C. Master Plan Priorities

In Rockville, the Master Plan addresses six individual elements and within each element establishes goals. The elemental visions and priorities that the zoning code should reflect are:

1. **Land use –**
 - a. Concentrate new growth in Town Center and near fixed transit stations;
 - b. Ensure a mix of housing; and
 - c. Ensure new development positively impacts the quality of life.
2. **Transportation –**
 - a. Provide a multi-modal transportation system that enhances accessibility while protecting neighborhoods and the environment; and
 - b. Reduce dependence on single occupying automobiles.
3. **Environment** - Integrate the protection of the environment in all public and private development and land use decisions.
4. **Community Facilities** - Continue to provide and enhance the city’s community facilities.
5. **Historic Preservation** - Protect the city’s physical and cultural heritage and encourage heritage tourism through historic preservation.
6. **Community Appearance and Design** - Use accepted community design principles, environmental, public art, and property maintenance standards to foster a distinct identity for Rockville.



D. Neighborhood Plans' Priorities

The Master Plan addresses each neighborhood individually and the particular concerns of each neighborhood. Though their current zoning classifications may overlap, each neighborhood has taken on a distinct character and developed individual goals applicable to them.

The following five neighborhoods are singled out because their neighborhood plans are the most current. The overarching priorities for each of these five neighborhood plans are listed below. A number of plans also include specific zoning implementation guidelines which are not provided here but which will be incorporated into the revision.

1. Lincoln Park

- a. Protect the stable and secure residential character of the neighborhood and provide a range of housing opportunities;
- b. Establish circulation patterns and opportunities that enhance and protect the residential neighborhood;
- c. Achieve a healthy, vibrant and sustainable environment in the neighborhood to protect and preserve the natural resources; and
- d. Use historic preservation tools to protect and preserve the cultural heritage of the neighborhood.

2. Town Center

- a. Create a daytime, evening, and weekend activity center that is easily identifiable, pedestrian-oriented, and incorporates a mix of uses and activities;
- b. Use urban design to establish zoning and density requirements that will assist in defining the Rockville Town Center;
- c. Provide sufficient parking for new mixed-use development and visitors;
- d. Provide an environment conducive to and supportive of living, working, shopping, and entertainment; and
- e. Accommodate a variety of densities and scales of development that are sensitive to an urban neighborhood environment and the demands of the marketplace.

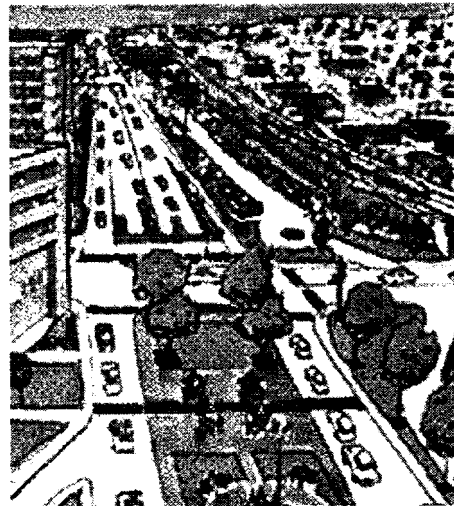


3. East Rockville

- a. Retain the neighborhood's existing sense of identity as a quiet, secure, stable, residential neighborhood;
- b. Redevelop the Stonestreet Avenue corridor and the Rockville Metro station property with a mix of uses that is both compatible with and complementary

to the East Rockville neighborhood, including a “Main Street” development pattern to become an asset for the community;

- c. Achieve a healthy, vibrant, and sustainable neighborhood that protects and enhances natural resources, in order to maximize environmental benefits and reduce or eliminate negative environmental impacts and consequences for current and future generations; and
- d. Achieve a lasting resolution to transportation related issues in this neighborhood by addressing non-resident vehicular traffic management while building on the existing community assets provided by access to the Metro and alternative modes of transportation.



*Concept for plaza over
Rockville Pike.*

4. Rockville Pike

- a. Offer a variety of mixed-use development of retail, office, and residential opportunities that respond to the diverse needs, opportunities, and expectations of the community and encourage the cooperation between businesses and residents to support this goal;
- b. Encourage the continued economic growth and vitality of the Rockville Pike Corridor;
- c. Emphasize the need for balanced transportation system that encourages all modes of transportation;
- d. Expand the retail, office, and residential bases affording opportunities to all Rockville residents;
- e. Promote a stronger sense of identity for this area as the commercial main street of the City;
- f. Protect existing residential areas and adjacent neighborhoods from encroachment of commercial land use, excessive traffic, unlawful noise, and pollution; and
- g. Encourage excellence in urban design and architecture through the review of all projects to make them stand out as an overall statement of the quality and vitality of this area of the City.

5. Twinbrook

The Twinbrook neighborhood is in the process of drafting their neighborhood plan. The Advisory Group is currently working through the issues facing the neighborhood such as housing and transportation. A draft plan is expected sometime in the summer of 2006.

III. POLICY ISSUES AND QUESTIONS

There are a number of interrelated policy decisions to be made in a comprehensive zoning revision. The following is only a brief list, but can be immeasurably helpful to the writers as the revision process continues. When considering the following policy issues, it should be remembered that no issue could be applied exclusively of the other. Where there is a choice between two sides of a scale, staff is *not* asking that a black and white definitive choice be made; only that *guidance* be provided as towards which side to lean more heavily.

The following sections list some of the policy considerations for the zoning code revision. Where a particular question is associated with the issue, the question is provided to address the concern, and start consideration of possible solutions. Particular recommendations associated with each policy issue will be included in the follow-up presentation.

A. Streamlining Processes

Throughout the code, various application processes are laid out. These steps are in some cases redundant, and in other cases are more complicated than they need to be.

Staff's primary example is a need to address opposition to building renovations earlier in the approval process. Under the current regulations, surrounding property owners are not made aware of renovations until after the applicant has invested a substantial amount of time and money. Modifications to the permit allowance at that point are difficult. Staff proposes some form of notice of application to be posted on the property and a limited time frame for neighbors to object. Initial notification can allow for neighbors to talk and mediate their problems before the applicant is heavily invested.

Solutions to streamline approval could include any/all of the following:

1. **Provide for Mayor and Council "call up" review of certain applications.** Applications already requiring Mayor and Council approval can be heard or not heard at their discretion if already approved by the Planning Commission. The following is an example process that would streamline the amount of information presented before Mayor and Council. Instead of the project automatically being verbally heard by Council, the recommendation of the Commission could be placed on the consent calendar of the Mayor and City Council within a set period of time after the Commission's review. In the case of certain applications (to be determined), three votes from Mayor and Council could be required to remove the project from the calendar and schedule it for a subsequent meeting. Otherwise, the recommendation of the Commission would stand and no hearing would be held. If the Mayor and Council votes to hear the item, a hearing would be scheduled as soon as practicable.
2. **Ensure that regulations and/or design guidelines are clear and state existing desires for development.** Clear regulations provide developers with an assumption of approval that their project can go forward if development standards are met. Case-

by-case reviews could be an option, but not the norm, and they should be aimed at enhancing flexibility and quality, not stifling it. To do this, staff would recommend consolidating the list of special development procedure approvals as much as possible.

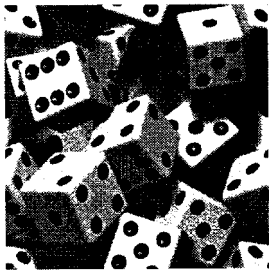
3. **Ordinance approval process checklists and flow charts.** It should be clear to the public where to submit applications, which agency retains final approval authority, and what sequence to follow for various types of applications. Ordinances may specify the authority and responsibilities of each agency and government body involved in the approval process. Too often, ordinances outline individual stages of the approval process, but not the overall process from start to finish and how long it typically takes. The City may consider publishing process and permit flow charts either as separate brochures or guidebooks to the ordinance for distribution by a central information desk. Staff is currently in the process of updating a Development Review Process Manual for the existing code guidelines.
4. **Allow for administrative approvals.** To speed up projects by eliminating time consuming public review of routine or minor matters, the City may consider establishing the authority for administrative waivers. In this way, the level of attention is commensurate with the level of project impacts. Valuable public and private resources are thereby devoted only to the review of projects that have a significant impact on the community. Authorized under Article 66B, §4.05(D)(1), a Planning Director or another designee may grant administrative adjustments from zoning requirements. For example, though not necessarily to be included in the revision, the guidelines provided may allow staff to approve a waiver of parking requirements up to 3 spaces if the applicant is willing to preserve an established tree.
5. **Development Review conferences.** Pre-application conferences are one of the most effective tools to assist developers and homeowners with the development review process. Encouraging developers to meet informally with planning staff to present concept or sketch plans can help address issues and requirements before expensive technical and engineering work commences. Some communities require a conference; others make it voluntary. Though currently applied in the City through the Development Review Committee, these conferences are not mandatory.

ISSUES: Streamlining the approval process can speed up development, reduce the cost on both the developer's and government's side; and can thereby reduce the cost of housing. In certain situations, a streamlined process can reduce the cost of administrative time and expenditures. As stressed in the 1991 Kemp Commission report *"Not in My Back Yard": Removing Barriers to Affordable Housing*, "In most places, permits and reviews are not logical point-to-point processes, but layers of single-issue reviews, each with decisions made without regard for costs or delays."

QUESTION: If there is a means to streamline any approval process, should staff consider any / all streamlined process?

B. Risk v. Proven Process

Innovative solutions to problems may have undeterminable risks. As with investments, risks can have rewards that far exceed proven interests. On the other hand, by mere definition of the word, there are potential dangers.



ISSUES: Inventive solutions have developed alongside the changing problems of evolving zoning and land use policy. New solutions may better fit new problems, while older solutions may better fit older problems. On the other hand, innovative solutions are not often tested in all situations. They can have detriments associated with them that have yet to be discovered. Proven solutions, however, may not fit the needs of new issues.

QUESTION: If there is an innovative solution to a problem, should staff pursue it for the revision?

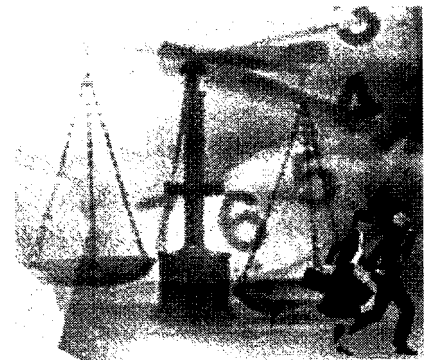
C. New Resources v. Existing Resources

Related to the choice of risks versus proven processes, is the option to apply new versus existing resources. One question would be to stick with existing procedures (Planning Commission review and Mayor and Council actions) or to implement new review boards and staff review processes.

For example, one consideration with urban design is the implementation of design guidelines. Many neighborhood plans are incorporating design guidelines into their recommendations. A design review committee has been used in a number of jurisdictions to ensure that each application meets the recommended guidelines for the applicable area of the jurisdiction. In the alternative, established procedures of staff review, Development Review Committees, and Planning Commission review, in certain situations, can be applied to any new approval requirement generated by design guidelines.

ISSUES: The establishment of new resources, such as review boards, staff positions, and permit processes, would allow for more particular review over the new issues and guidelines established in the zoning revision. On the downside, these new resources may require additional funds of the city and more time for staff to coordinate while new regulations can be geared to fit into existing resources.

QUESTION: Should staff recommend new / different permitting / review requirements?



D. Flexibility v. Certainty

Flexible development procedures, as are currently allowed through a number of special development options (as discussed in the Optional Method paper), allow homes to be arranged closer, and on smaller lots than normally required by the zoning code. To the extent possible, flexible zoning protects the natural features and character of a neighborhood. Regulations include determination of the districts where special development is allowed, the form of the approval process, the size of the property subject to special review, and the minimum bulk requirements required for the development.

The term “flexible zoning” also includes consideration of prescriptive (what a community wants to see) versus a proscriptive (what the community does not want to see) regulation style. A common example of **proscriptive** zoning is minimal lot standards. A zone calling for 5,000-square-foot building lots is a *minimum*, allowing people to use 10,000- or 20,000-foot building lots if they want. In other words, the City that includes such a regulation does not want to see anything smaller than 5,000 square feet but what it does want to see is not clear. Though allowed under that type of regulation, there is a big difference between 5,000 and 20,000 that could be built. A **prescriptive** zoning regulation, however, might call for building lots with a *maximum* size of 5,000-square feet. The regulation shows that the City would like to see 5,000 square feet lots. Though 1,000 square feet would be allowed, there is not as much of a difference between 1,000 and 5,000 as there would be between 5,000 and 20,000.

With **prescriptive** regulations, a developer is given much flexibility in the way they complete a development, as long as it meets certain goals and objectives included in the zoning code. Flexible zoning, in the alternative, does not specify a specific land use or density or parking requirement for private land. Flexible regulations simply set the rules of the marketplace. For example, flexible regulations to restrict adult theaters would not prohibit them entirely; but would permit them only outside a certain distance of a school or would require mitigation measures for them. This type of zoning is discussed in greater depth in the urban design issue paper.

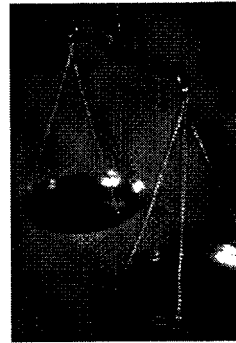
Flexibility versus certainty also means the difference between using flexible design guidelines versus set zoning regulations. With design guidelines amendment procedures are easy to adjust to the evolving values and design projects of a city. Land use regulations specifying design requirements, on the other hand, must undergo a lengthy legislative change process. Guidelines cannot be as thoroughly enforced. Design guidelines are also discussed in the urban design white paper.

ISSUES: Tried and true methods of zoning enforcement are known to staff and would not require additional training (outside a renewed familiarity with any changes made to the revised zoning code). Flexible zoning, on the other hand, may allow for an easier application of the code, and more ideal development for the city.

QUESTION: Should staff consider applying any/all of these flexible zoning ideas in the revised zoning code?

E. Major Policy Prioritization

There are major policies that must, from time to time, be balanced. Other times they must be prioritized. The Urban Design White Paper has determined that the priority of the entire zoning code should be livability. In order to establish the type of community that meets these “livable” goals, there are individual considerations to be made. Transportation, development form, location of civic and commercial uses, environmental considerations, and housing alternatives all must be balanced to create a unique and livable community.



In making minor changes to the code, all the considerations of a livable environment can be affected. Though staff will balance the following issues, wherever possible, as they are all important, there may be situations where one or more of them may have to take priority.

- Transportation
- Environment
- Housing
- Infrastructure
- Economic Development
- Public Amenities

F. Connection with Other Development Regulations

Zoning works in conjunction with other development regulations provided in the Code of the City of Rockville. Each set of regulations has their own priorities, which may or may not be in opposition to the ideals to be developed in the zoning code. In particular, these competing value codes include:

- a. Chapter 5 – Buildings and Building Regulations (which includes the electrical, gas, energy conservation, property maintenance, and plumbing codes)
- b. Chapter 9 – Fire Safety Code
- c. Chapter 10 – Floodplain Management
- d. Chapter 10.5 – Forest and Tree Preservation
- e. Chapter 13.5 – Moderately Priced Housing
- f. Chapter 14 – Parks and Recreation
- g. Chapter 19 – Sediment Control and Stormwater Management
- h. Chapter 21 – Streets and Public Improvements

The communication among staff, especially with regard to these white paper discussions, is one way to ensure that the zoning code does not negatively impact these other codes.

If a choice needs to be made between the zoning code regulations (and implications) and any/all of these additional chapters of the code, staff seeks guidance on the means to choose between/among them.

IV. RECOMMENDATION

Additional policy decisions will be needed as the zoning revision process continues. Staff recognizes that fact and will present additional policy considerations as they come forward. As an initial step to address the known concerns, staff has made general recommendations on the policy issues and questions addressed in this paper.

A. Streamlining

1. **“Call Up” Review** – Staff recommends incorporating a “Call Up” review provision for items that 1) are already approved by the Planning Commission and 2) would normally be presented to Mayor and Council. In particular, this would include all special developments. The “Call Up” Review would lighten the number of matters for Mayor and Council to hear. The particulars of this process will be addressed in the follow-up meetings of staff and Mayor and Council.
2. **General Streamlining** – Staff recommends making the regulations as clear as possible with the inclusion of purpose statements that express the desires for development and will assist in interpretations.

The Development Procedures Manual is currently being revised. After the adoption of the Zoning Ordinance is completed, the manual will be updated to reflect any changes. The manual includes flow charts to identify the process development applications must take and will include checklists to ensure that the necessary application items are provided.

3. **Administrative Approval** - Staff feels that minor deviations from zoning regulations may be reviewed administratively. An approval procedure is being considered for these waivers along the following guidelines:
 - a. An established list of permissible administrative adjustments would be included in the Zoning Ordinance with clear guidelines to follow.
 - b. When an application for one of the listed waiver requests comes to the Planning Department, a designated staff member would review the application and either grant or deny the waiver on a temporary or conditional basis.
 - c. A sign would be posted on the property affected to alert neighbors of the temporary approval / denial.
 - d. Through a simplified process, the Board of Appeals or the Planning Commission would review the staff’s administrative approval or denial and either uphold the decision or reverse it.

The recommendations provided in this presentation are meant to be only general guidelines from which to draw specific recommendations at following meetings. This process for administrative approvals is an example of these general recommendations. Specific considerations for an administrative approval as listed above would include 1) whether any public concern would immediately reverse the administrative approval and warrant a hearing by the reviewing board; 2) which requirements may be waived by staff and which board (who would currently hear the application) would be the reviewing body; and 3) what would be the publication requirements for board review. For example, if the Board of Appeals reverses a decision, a public hearing could not automatically be held the same night without advanced publication.

4. **Development Review conference** – The City already uses pre-application conferences for the majority of major projects on a voluntary basis through their Development Review Committee. Staff recommends including the requirement in the zoning revision for special developments. In the particular competing values recommendations, to be presented at a later date, staff will address whether to apply Development Review conference requirements to standard developments.

B. **Processes, Resources, and Flexibility** – Staff supports the application of what may be riskier processes, the inclusion of new resources, as needed, and the inclusion of flexible regulations to meet the particular needs of the new regulations. A broad educational effort must be included in the zoning adoption to teach the public, staff, and various boards about any new processes or resources that may be included. In addition, new resources may be needed to provide the flexibility and other goals of the revision.

C. **Prioritization** – Staff agrees that the top priority for all policy considerations in the revision is to preserve the health and safety of the City. Besides health and safety, no one priority, from the list of priorities given in section 3, will trump any other priority in *every* situation. Some guidance should be in the ordinance for staff, to drive individual case decisions. Established guidelines for review will aid in providing consistent recommendations. For example, with setbacks the following policy competitions may apply:

1. Tree preservation
2. Sidewalk size
3. Buffer requirements

The question proposed is whether to be more lenient in administering one requirement, if the inclusion of another requirement will better meet the social policy needs and goals of the City. For example, if the property owner is more willing to cluster their development for the benefit of open space preservation and parkland

dedication, then the City may allow greater traffic impact from the development, or grant a parking waiver.

An additional question for future discussion is whether staff should apply these prioritization guidelines solely at the special development level or whether these guidelines should apply for small subdivisions.

V. CONCLUSION

Though there are a number of competing values associated with a comprehensive zoning revision, the process will be a collaborative one. With the cooperation of different staff departments – Inspection Services, Public Works, Parks and Recreation, and Planning – these various white paper discussions will create a final document that incorporates and balances competing interests. In addition, Mayor and Council will continue to provide their guidance to direct staff in their recommendations. Initial discussions, like this white paper, will ensure that the competing policy considerations are included in the final document and will reduce future rewrites.

There are a number of policy decisions that Mayor and Council can make prior to the drafting stage of the zoning revision. These decisions will facilitate the zoning revision process and to limit the amount of time spent later in the re-writing stage.

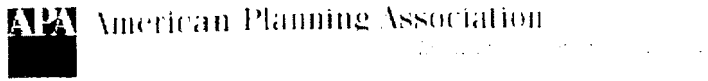
The following questions summarize those asked earlier in this paper.

1. If there is a means to streamline any approval process, should the staff develop particular recommendations for a streamlined process?
2. If there is an innovative solution to a problem, should staff consider it, though new resources may be needed?
3. Should staff continue to provide recommendations for flexible zoning ideas to be included in the revised zoning code?

While this paper makes only general recommendations, particular recommendations will be made at the next presentation on this topic. In general, staff encourages the use of streamlined provisions and is open to more flexible regulations, though new processes will require additional training for staff and boards.

VI. ATTACHMENTS

1. Garvin, Elizabeth, "Unraveling the Mysteries of Code Writing," APA, Summer 2003.
2. Landsburg, Steven E., "Is Housing Too Expensive? Blame the Government," Slate.com, July 29, 2005.
3. Annotated Code of Maryland, Article 66B, "Land Use," §4.03
4. Kaiser, Godschalk, & Chapin, Urban Land use Planning, 1995, p. 52.



Summer 2003

Unraveling the Mysteries of Code Writing

By Elizabeth A. Garvin, AICP

Land development regulations are everyday tools of the trade for planning commissioners. These regulations are the basis for community decisions about development, growth, and change. They have a wide-ranging audience, including staff, engineers, architects, and attorneys, and they are subject to regular discussion and debate. Your copy of the local regulations may be dog-eared, highlighted, flagged, and "annotated." Yet for all of this attention land development regulations can be ignored and abused. Changing the regulations can be perceived as an unpleasant process, and regulations can be bent and interpreted to a point of losing meaning. Conversely, they can be subject to piece-meal amendment and revision that leaves them functionally useless. This article will explore the important process of developing regulations and provide an approach to keeping regulations up-to-date and truly useful.

Defining Development Code

Speaking technically, the primary and most important role of a development code is its use as a legal document that fully describes the regulatory authority of a municipal body, which is the city, county, town, or agency. The municipal body is enabled by that state's statutory authority, in other words, the amount of authority the state gives a subordinate government to regulate land use. In practice, the development code is the collection of rules, requirements, restrictions, conditions, criteria, and processes that frame land development.

Development regulations come in two basic formats: the classic zoning ordinance and subdivision regulations as separate documents; or the land management ordinance. The latter may be available as LMO, UDO, LMR and a variety of other acronyms and is a combination of zoning and subdivision regulations in a unified document. There is a newcomer in this category called form-based zoning. Form-based zoning is closely identified with the New Urbanism movement and mixes architectural themes and three-dimensional urban design into more traditional zoning concepts.

Some communities have other types of land development regulations. These include:

- design guidelines
- adequate public facilities ordinances
- growth management ordinances

Plus there are a host of smaller items, such as:

- view requirements
- steep slope and hillside regulations
- tree preservation guidelines

Fees and Funding. There are also a related category of land development fee and funding regulations, which do not directly regulate property but are triggered by land development decisions. These include:

- impact fees
- exactions
- transfer of development rights,
- redevelopment programs, i.e. tax increment financing
- some taxes, i.e. excise taxes

The terminology may vary by geographic location and your community may use terms such as ordinance, bylaws, code regulations, or guidelines. The important point is they play a similar role, which is to provide a set of rules and policies to regulate the development of land.

Plan Implementation

The second role of the land development regulations is to implement the comprehensive plan. Implementation in this context is planning jargon for some action taken to make the plans goals and policies move forward. Many plans have a section or element dedicated to implementation that lists the various actions to be taken. Here is one example of regulatory implementation-incorporating plan design recommendations into regulatory requirements such as design guidelines. Another example is including plan land use policies in regulatory decision-making criteria. Yet a third example is making reference to the plan in the purpose statement of the zoning districts. The role of the plan as it relates to the regulations is twofold. First it provides a framework for the regulatory process so that the regulations can address all of the issues necessary to guide development. Second, it provides detailed information about preferred future development so that regulatory decisions can be made in keeping with the plan.

If the plan is so important, it should correspond well to the regulations. But that depends on your location. In some states, regulatory consistency with the comprehensive plan is mandatory, i.e., the plan and regulations should work together and mirror each other. In some states, the plan and the regulations should be "in accordance with" each other. This leaves room for interpretation, and typically judicial opinions in each state define the level of closeness required by the phrase "in accordance with." Further, in some states, there is either no requirement or whatever minimal requirement exists in state statutes has been interpreted so as to effectively eliminate a relationship between the plan and the regulations.

Regulatory Update

Without naming names, some local governments have land development regulations do not serve their basic planning and regulatory requirements. Fortunately, many communities recognize the problem. Whether provoked by a desire to clean house, changing development patterns, staff revolt, or a lawsuit, many appointed and elected officials decide each year to update their development regulations. Once a commitment has been made to bring regulations up-to-date, this work typically follows a five step process:

- Step One: Defining the process
- Step Two: Establishing public participation
- Step Three: Diagnosing or analyzing the existing regulations
- Step Four: Outlining the new code
- Step Five: Drafting the updated regulations

Defining the Process

The first step in the regulatory update process is defining the process. There are several critical questions you need to ask at the onset. Is it time to throw the whole code out and start over? Or, will it only be necessary to refine key provisions? How long is this job expected to take? What will the community do if it runs into unforeseen issues that prolong the process? Will staff undertake the rewrite? Or, should a consultant be hired? Defining the process is the job of setting expectations to ensure that all of the participants are working toward the same result in the same manner.

Establishing Public Participation

Public participation is necessary for an effective update of land development regulations. The question is how much public participation is necessary given the way the community works and the overall scope of the project. In a case where the regulatory update will be small or targeted to a specific problem, such as adding provisions for conservation subdivisions to an area that previously only had conventional subdivisions, it may only be necessary to meet with residents of relatively undeveloped areas and representatives of the development community. Conversely, where new zone districts are being developed and development standards are being substantially rewritten, it may be necessary to engage in a much larger public participation process. Public participation may include any or all of these approaches:

- open meetings or workshops
- interviews
- surveys, either written or visual or both
- open periods of public comment
- design charrettes

A design charrette is typically a session or group of sessions where public interaction is facilitated by a planner or architect to explore a series of design concepts applicable to an identified issue with the purpose of creating a preferred design solution. Charrettes can be a useful part of the code revision process, but given their limited focus on design, they should not be the entire basis of the revision process.

In addition to these outreach forms of public participation, the local government may want to create a steering committee to guide the policy aspects of the process, and a technical committee to provide specific feedback on the process.

Diagnosing or Analyzing Existing Regulations

A critical step of the regulatory update process is determining — with some specificity — the problems of the existing regulations. This is because problems with regulations are not always a function of the way a certain provision is drafted. In addition to drafting changes, a regulatory diagnosis should take into account the following four issues.

First, ask the question: Are the provisions working toward a common result or do they conflict with each other? Second, examine how issues outside of the regulatory process, such as state control or engineering requirements, impact development outcomes. Next, examine how the overall tone of the regulations influences decisions. Determine whether the requirements are inflexible and assess whether they discourage negotiation. Or, are they too flexible to provide a starting point for development design? Finally, determine whether, in the big picture, the regulations meet the needs of the plan; in other words, if the plan calls for strong neighborhoods, do the regulations reinforce this?

The code diagnosis should also explore the local government's options for changes to the regulations. It should, at a conceptual level, identify both policy and regulatory choices that will need to be made prior to drafting new regulations. In many instances, a particular issue can be resolved in a number of ways, one of which may be best-suited to your approach. For example, the community may want to encourage mixed-use development to occur at a certain location. One community may be happiest with the creation of a simple mixed-use district and then wait and see what happens. A different community may need to agree on a definition of mixed-use. In this article *simple mixed-use district* is defined as one building divided vertically or multiple buildings with single uses. Community officials will need to determine what incentives will be necessary to encourage mixed-use. For example, officials should consider shared parking, streamlined permitting, and site plan with waivers instead of variance procedure. Next, they need to establish design requirements for potential projects, to include such factors as height regulations, setbacks, and architectural requirements. These are issues that should be identified at a conceptual or big picture level so that the local government can reach agreement about the approach prior to moving to the detailed level of drafting regulations.

In addition, the contents of the regulations are guided by five things. First is the scope of state authority found primarily in state statutes followed next by local government home-rule. Thirdly, regulations are also guided by state and federal case law, and finally and ultimately by the local government's approach to, and comfort level with the regulatory process. The diagnosis provides an opportunity to ensure that potential solutions fit within the local legal requirements. While many states started with similar enabling legislation founded in the State Zoning Enabling Act of the early 1930s, changes over time have resulted in widely varying statutory requirements. A similar range of restrictions exists in the law, so that things you can do in California are not always things you can do in Virginia. Working within the confines of authority, though, many jurisdictions have found ways to reach desired and similar results through a variety of regulatory approaches.

Outlining the New Regulations

Following the diagnosis and identification of community-preferred ways to regulate, it is helpful to prepare an outline or table of contents of the updated regulations. This will show how all of the provisions will fit together. A sample table of contents would include:

General Provisions
Administrative and Review Procedures
Zone Districts and District Regulations Use Regulations
General Development and Design Standards
Subdivision and Public Improvement Standards
Nonconformities
Enforcement and Penalties
Definitions
Appendices

This potential table of contents can vary, depending upon the factors stated above. In addition to regulations, a community may have administrative guide books, including more detailed information about standards and processes, public distribution information that educates about the regulatory process, and information at varying levels of detail on the local website. Most of these should be considered in the creation of the outline.

Drafting

This term sounds much simpler than it actually is. Drafting is an ongoing process, usually taking three to six or even more iterations to achieve regulations that meet the requirements of the various reviewers. Code updates can be drafted in chapters, segments, or issues. Many times there is a "rolling" review process where each segment is reviewed as it is drafted and then the whole document is reviewed again upon completion. The drafting process may vary by community and it will be the responsibility of the steering committee or project manager to keep this process moving forward.

Drafting of modern regulations will include the provision of charts, graphics, and illustrations. There is no generally recognized prohibition on pictures in regulations, and it has probably been a function of the fact that regulations were historically drafted by attorneys and it has not been until recently that graphics have started showing-up in regulations. Indeed, some recent judicial opinions have recognized the helpful nature of pictures and illustrations to interpret regulations. Other tips for draft regulations include:

- use of standard language (another legal throw-back)
- ensure consistency everywhere
- if possible in your community, structure the regulations to be used electronically

Adoption

Once the drafting process is completed, the regulations will be subject to adoption by the standards established in state statute. If all goes well, this will not be the time residents decide to start a movement to overthrow the regulations — one of the many reasons why public participation is so important to the process. Adoption, however, is not the end of the process. The staff, planning commissioners, and elected officials will need training to use of the new regulations. And it may be advisable to run some test projects through the process to see how they work. Further, it is necessary then to remember that the regulations are a dynamic document that may and should be subject to continual review and update where necessary. After all, you got to the point of overhaul in the first place! Some approaches that were selected through the diagnosis process may not work as well in real life as they did on paper. This issue will show up in the first few years of the regulation's life. These will need to be changed or tweaked, and

while the community is at it, some new design style may have come into favor and now those will need to be reflected in the codes ... And so it goes.

Finished

As we noted in the previous paragraph, this word is a misnomer. But there will be a day when the update process is complete and you can spend more time using the regulations than writing the regulations. This is usually about 18 to 24 months after you have started, depending upon the requirements of the update. At this time, you will have a code that provides a broad scope of authority, specifies appropriate processes and standards, and implements the comprehensive plan. Then at that point — it will be time to update the plan.

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everyday economics

Is Housing Too Expensive? Blame the Government

Maybe zoning laws are causing the real-estate bubble.

By Steven E. Landsburg

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Elementary economics tells you that in a competitive environment, the price of a new house should equal:

the price of land + construction costs + a reasonable profit for the developer

But in most cities, that sum is not even close to what buyers are paying.

Take Dallas, for example. If you live in central Dallas, and if you could magically add a quarter of an acre to your lot size, you'd add (on average) about \$2,200 to the value of your house. (We know this from comparisons of similar houses on different-sized lots.) Do the same in central Philadelphia, and your house value increases by \$8,400; in central Houston, it's more like \$17,600. In that sense, central Dallas land is just about the cheapest urban land you can find in this country. Among large cities, only Atlanta, Boston, and St. Louis rank lower. In theory, that should be great news for Dallas housing prices. But it's not. A house that costs \$100,000 to build typically sells for \$140,000 in Dallas, maybe \$120,000 in Houston, and under \$90,000 in Philadelphia.

Aha! say the commentators. Housing prices must be driven by something other than fundamentals. Speculators, of either the rational or the irrational variety, are the obvious culprits.

Here's what's wrong with that analysis: Housing prices have to make sense on both the demand side and the supply side. No matter what you do or don't believe about the ability of crazed demanders to bid up prices, you still have to explain why competitive suppliers don't bid those prices right back down. In other words, if the housing market is so tight that builders are making a fortune, they ought to be flooding the market with new houses—and driving down prices.

In fact, buyers' behavior is relatively easy to explain. Most of the recent explosion in housing prices has been in cities like San Francisco and Santa Barbara—in other words, in really nice places to live. It's not unreasonable to believe that, as Americans grow richer, and as technology makes us more mobile, more and more of us want to move to California. And it's not unreasonable to expect that this trend will continue, so that even a very expensive house in the Bay Area can look like a good investment.

The great mystery is on the supply side. Instead of the traditional formula "housing price equals land price + construction costs + reasonable profit," we seem to be seeing something more like "housing price equals land price + constructions costs plus reasonable profit + *mystery component*." And, most interestingly, the mystery component varies a lot from city to city.

Even in cities like San Francisco, where there's little room to build and land is consequently dear (on the order of \$85,000 per quarter acre, compared with \$2,200 for Dallas), you can't use land prices to explain away housing prices. The mystery component in San Francisco housing—that is, the amount left over when you subtract land prices and construction costs from house prices—is the highest in the country.

Edward Glaeser of Harvard and Joe Gyourko of the University of Pennsylvania have computed these mystery components for about two dozen American cities. They speculate that the mystery component is essentially a "zoning tax." That is, zoning and other restrictions put a brake on competitive forces and

keep housing prices up. (Read one of their papers [here](#).)

When you buy a house, you're not just paying for the land and construction costs; you're also paying for a building permit and other costs of compliance. You've got to get the permits, pass the zoning and historic preservation boards, ace the environmental impact statement, win over the neighborhood commission, etc. If Glaeser and Gyourko are right, that's the mystery component right there.

It's hard to test this theory directly, because it's hard to get good measures of compliance costs in various cities. But Glaeser and Gyourko did the next best thing: They measured a *part* of the compliance costs, namely the average length of time for a permit to be granted.

If the theory is correct, that length of time should be a good but imperfect predictor of the mystery component in housing prices. The data largely support this theory. About half of all cities are rated 2 (on a scale of 1 to 5) in terms of how long it takes to get a permit; these are, without exception, the cities with the lowest mystery component in housing prices. Cities rated 3, 4, and 5 all have higher mystery components. (A bit disconcertingly, so do the three cities—Minneapolis, Chicago, and Anaheim—that are rated 1. Peculiar as these exceptions are, there are at least only three of them, and we should expect some anomalies given that Glaeser and Gyourko's measure of zoning costs is rather crude.) You can talk all you want about crazed speculators and bubbles in housing prices, but you still have to explain why competitive forces don't bring prices right back down. According to Glaeser and Gyourko, it's ever-expanding zoning laws that get in the way. If you want to lower prices, that's the bubble you've got to burst.

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§ 4.03.

(a) The regulations adopted by a local legislative body shall be adopted:

(1) In accordance with the plan;

(2) With reasonable consideration for, among other things, the character of the district and its suitability for particular uses; and

(3) With a view to conserving the value of buildings and encouraging orderly development and the most appropriate use of land.

(b) The regulations shall be designed to:

(1) Control congestion in the streets;

(2) Secure the public safety;

(3) Promote health and the general welfare;

(4) Provide adequate light and air;

(5) Promote the conservation of natural resources;

(6) Prevent environmental pollution and avoid undue concentration of population; and

(7) Facilitate the adequate provision of transportation, water, sewerage, schools, recreation, parks and other public requirements.

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A Model of Land Use Change Management

To use a simple structural analogy, land use change management can be visualized as the seat or main integrating framework of a stool whose three legs are social use, market, and ecological values. Further joining the legs is the overarching concept of sustainable development (Figure 2-2). For the stool to stand, every part must be in place, equally proportioned and properly joined.

Each leg—or value—is necessary. If social use values, as exemplified by neighborhoods and activity patterns, are not accounted for, then citizens will not accept planning. If market values, as exemplified by profit-seeking real estate development, are not accounted for, then city building cannot take place. If ecological values, as exemplified by natural resource conservation, are not accounted for, then development cannot be sustained.

If the three legs have no integrating structure, there will be no way to resolve their conflicting claims through the land use change management process. Because of the inherently selfish nature of interest group advocacy of individual values, a strong coordinating process is necessary to provide the analytical, synthetic, and sociopolitical efforts needed to balance and coordinate competing interests. Public leadership in land use change management provides the primary coordinating process. Sustainable development can be an important guiding principle in the search for balance among the three legs.

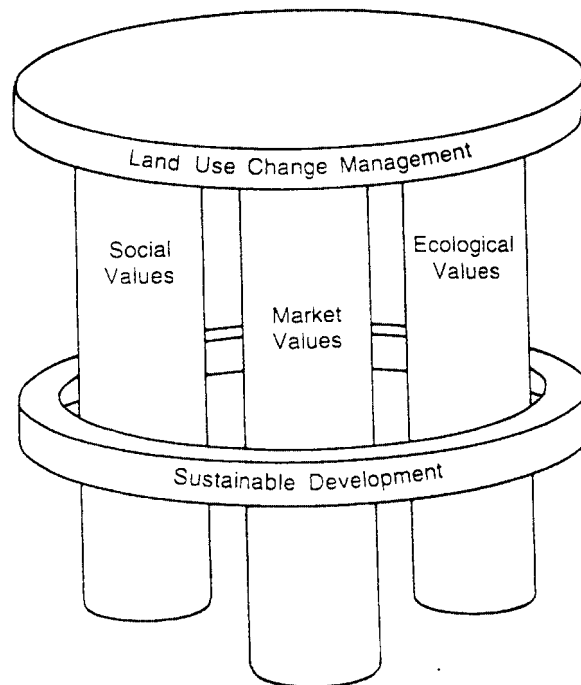


Figure 2-2. Land Use Change Management as a Three-Legged Stool